

### EXAMINER'S AMENDMENT

1. This action is responsive to the after final Amendment filed December 29, 2010 and the interview of January 11, 2011. The after final Amendment has been **entered**, and claims 1-2, 11, 29, and 31-33 are now **allowed**, subject to the Examiner's amendment set forth below. It is noted that allowed claims 11, 29, and 31-33 will be renumbered as claims 3-7 in the issued patent (in accordance with 37 CFR 1.126)/ Original claim numbering is employed in the examiner's amendment.

2. An extension of time under 37 CFR 1.136(a) is required in order to make an examiner's amendment which places this application in condition for allowance. During a telephone conversation conducted on January 11, 2011, Mark Skoog requested an extension of time for ONE MONTH(S) and authorized the Director to charge Deposit Account No. 13-2725 the required fee of \$130 for this extension and authorized the following examiner's amendment. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

***Summary of the interview of January 11, 2011***

3. On 1/11/11, the examiner contacted applicant's representative regarding minor amendments to clarify new claims 32-33 and place the application in condition for allowance. The examiner also indicated that she would include a comment on the record regarding the interpretation of the term "second antibiotic resistance marker" (see comment set forth below). Applicant's representative authorized the proposed amendments and a one month extension of time. Accordingly, claims 1-2, 11, 29 and 31-33 are now allowed.

***Comment regarding claim interpretation***

4. Regarding the term "second antibiotic resistance marker" in claims 32-33, it is noted that this term has been interpreted as referencing a second marker that differs from the hygromycin resistance marker that is present in SEQ ID NO: 15 (which marker would be considered a "first" marker relative to the second marker required by claims 32-33). This interpretation is consistent with the "plain meaning" of the term as it would be understood by one of ordinary skill in the art, such that new claims 32-33 as amended herein are considered clear and definite.

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5. **The application has been amended as follows:**

In claim 32, at line 2, after “second antibiotic” insert—resistance--.

In claim 33, at lines 1-2, delete “second antibiotic marker gene” and insert therefore—nucleic acid encoding the second antibiotic resistance marker--.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diana B. Johannsen whose telephone number is 571/272-0744. The examiner can normally be reached on Monday-Friday, 8:30 am-2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Nguyen can be reached at 571/272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Diana B. Johannsen/  
Primary Examiner, Art Unit 1634